

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CIV. NO. 2:05cv477-D
)	WO
JOHN HENRY TOWNSEND)	

ORDER

On July 12, 2005, John Henry Townsend filed a notice of appeal which is construed as containing a motion for certificate of appealability and a motion for leave to proceed on appeal *in forma pauperis*. (Doc. No. 8.)

28 U.S.C. § 1915(a) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” In making this determination as to good faith, the court must use an objective standard, such as whether the appeal is “frivolous,” Coppedge v. United States, 369 U.S. 438, 445 (1962), or “has no substantive merit.” United States v. Bottoson, 644 F.2d 1174, 1176 (5th Cir. Unit B. May 15, 1981) (per curiam). Moreover, a certificate of appealability may issue only if the applicant “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b).

Applying these standards, the court is of the opinion, for the reasons stated in the recommendation of the magistrate judge, that Townsend’s appeal is without a legal or factual basis, and, accordingly, is frivolous and not taken in good faith. See Rudolph v. Allen, 666

F.2d 519, 520 (11th Cir. 1982) (per curiam). Furthermore, the court finds that Townsend has failed to make a substantial showing of the denial of a constitutional right.

Accordingly, it is CONSIDERED and ORDERED that Townsend's motion to proceed on appeal *in forma pauperis* and motion for certificate of appealability be and the same are hereby DENIED and that the appeal in this cause is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE this 18th day of July, 2005.

/s/ Ira DeMent

SENIOR UNITED STATES DISTRICT JUDGE